

MINUTES

ANN ARBOR CITY PLANNING COMMISSION

REGULAR MEETING

7:00 p.m. – April 21, 2009

Time: Chair Bona called the meeting to order at 7:02 p.m.

Place: Council Chamber, Second Floor, 100 North Fifth Avenue, Ann Arbor, Michigan.

ROLL CALL

Members Present: Bona, Borum, Carlberg, Derezinski, Mahler, Potts, Pratt, Westphal, Woods

Members Absent: None

Members Arriving: None

Staff Present: Bartha, Kahan, Kowalski, Lloyd, Pulcifer

INTRODUCTIONS

None.

APPROVAL OF AGENDA

Moved by Derezinski, seconded by Westphal, to approve the agenda.

A vote on the motion showed:

YEAS: Bona, Borum, Carlberg, Derezinski, Mahler, Potts, Pratt, Westphal, Woods
NAYS: None

Motion carried unanimously.

REPORTS FROM CITY ADMINISTRATION, CITY COUNCIL,
PLANNING AND DEVELOPMENT SERVICES, PLANNING COMMISSION
OFFICERS AND COMMITTEES, WRITTEN COMMUNICATIONS AND PETITIONS

Derezinski noted that Council voted last night to return the Downtown Plan to the Commission for further review, given the extensive changes made by Council to the A2D2 Zoning Ordinance. He said that once the Council minutes were complete, the Plan would be sent back to the Commission.

Lloyd confirmed that the Downtown Plan would be sent back to the Commission, noting that staff would share a timeline as soon as one was available. He also noted that Commissioner Borum would be leaving the Commission soon, and that Steve Bartha, a Community Services Management Assistant, would be leaving the City in June. He also encouraged people to visit the City webpage to use the new Projects Under Review program, which tracked the progress of petitions, noting that it was a great place to find information on projects. He finished by reminding everyone that Building Services had moved to 2000 South Industrial Avenue, just south of Stimson Street.

Pratt mentioned that the Floodplain Committee would meet on April 22 at 3:00 p.m. in City Hall. He said a draft ordinance was complete and that it would be ready soon for a Commission working session. He was hopeful that the final-draft Ordinance would be ready at some point during the summer.

Bona mentioned the three written communications in the agenda packets: Pittsfield Township Comprehensive Plan Amendment Hearing Notice; emails regarding City Place Proposal; and emails regarding Near North Proposal.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARINGS SCHEDULED FOR NEXT MEETING

Bona announced the public hearings scheduled for the May 5, 2009 Planning Commission meeting.

REGULAR BUSINESS

(a) Public Hearing and Action on City Place Site Plan, 1.23 acres, 407-437 South Fifth Avenue. A proposal to demolish seven existing buildings (total of 21 existing dwelling units) and to construct two three-story apartment buildings containing 24 rental units (144 bedrooms) total and 36 parking spaces – Staff Recommendation: Approval

Kahan made a brief presentation and provided a summary of the proposed project.

Tom Whitaker, 444 South Fifth Avenue, on behalf of Germantown neighborhood association, spoke against the project. He believed the petitioner was designing a 144-unit apartment building, not 24 six-bedroom apartments, and that 36 parking spaces for 144 tenants and their guests was insufficient. He noted that R4C zoning was to be reviewed this summer, and believed the petitioners were in a hurry to push this project through in the meantime, and asked the Commission to postpone the proposal and to

recommend that Council place a moratorium on demolition until the R4C issue was addressed and revised.

Karen Sidney, 100 Longman Lane, spoke against project.

Ellen Ramsburgh, 1503 Cambridge Road, spoke against the project.

Debra Odette, a representative of the Michigan Historic Preservation Network, spoke against project.

Deanna Relyea, 541 S. Fourth Avenue, spoke against the project.

Tomas Petite, 342 S. Fourth Avenue, spoke against the project.

Ann Eisen, 442 S. Fifth Avenue, spoke against the project.

Alex de Parry, president of Ann Arbor Builders, Inc. and the project owner, said his development team was present to address Commission and staff comments. He said his project met Code requirements, and that he sought no variances. He stated his preference for the original Planned Unit Development (PUD), and noted that he had spent several months working with the neighborhood on an agreeable project before the neighborhood abandoned the talks.

Brad Moore, of J. Bradley Moore Associates, disputed that the project was out of character for the neighborhood, stating that it depended on how neighborhood was defined. He believed that an increase in density was very appropriate, and that although the size of the project was different from individual homes, it was in keeping with the wider neighborhood. He finished by stating that the project met Code requirements and that he believed the project was compatible with the area.

Jamie Gorenflo, of Midwestern Consulting, noted that Planner Jeff Kahan was recommending approval. He said that the Commission and Council must base its decisions on ordinances and laws. He noted that the proposed project met all minimum standards in relevant ordinances.

Scott Munzel, 121 W. Washington Street, representing the partnership, stated that the law was clear in that if a project met criteria, it must be approved. He said this was true for appointed and elected bodies. He noted that the staff report confirmed that all standards were met. As a straight site plan, he said the Commission had to make a simple administrative decision as to whether criteria were met. He also commented on the fact that the staff report talked about the historic nature of the buildings, while historic designation had been removed from the homes in 2002, and only recently had the designation been re-sought. He also said that the project before the Commission was not their first choice, but after a lengthy process it was their best effort. He finished by telling the Commission that while they may not like this project, the law was clear.

Tom Luczak, 438 S. Fifth Avenue, spoke against the project, stating that the petitioner appeared to manipulate the roof, using enormous dormers to meet Code.

Susan Whitaker, 444 S. Fifth Avenue, spoke against the project.

Chris Crockett, 506 E. Kingsley Street, spoke against the project.

Ray Detter, 120 N. Division Street, spoke against the project.

Noting no further speakers, Chair Bona closed the public hearing at 8:05 p.m.

Moved by Carlberg, seconded by Derezinski, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the City Place Site Plan and Development Agreement.

Bona commented on the references to the Central Area Plan, stating that the document was not part of the Commission's criteria in reviewing site plans; rather, it was used to direct zoning.

Carlberg asked the petitioner about the Citizens Participation Ordinance (CPO) report, noting he had cited an interest in saving homes. She said it sounded like he had not fully investigated this possibility. She asked if he would consider further exploring this, and returning with a plan to save the houses.

de Parry said his original plan would have saved 6 of 7 houses, but that there had been an issue with that project's rear building height. He noted that the project before the Commission met Code, and that his team had attempted unsuccessfully to design a plan that everyone agreed with.

Carlberg said she was impressed by the petitioner's statements in the CPO about maintaining neighborhood integrity, but she said that this plan did not reflect that.

de Parry replied that he was before the Commission for an R4C plan, not the PUD plan that was rejected. He said they spent a lot of time, money and energy trying to resurrect the older plan, but that the neighborhood was unwilling to compromise with him.

Westphal was concerned about parking, and asked the petitioner if the 36 spaces would be linked to specific units.

de Parry replied that a lot of parking was planned to be built a half-block from the proposed project.

Moore noted that zip cars were also available within a block of the project.

Bona asked the petitioner to address Commissioner Westphal's question.

de Parry said parking spots were always controlled and assigned to individual tenants.

Potts asked staff about the roofline and dormers. She said the dormers looked like they added a floor.

Kahan read the definition of a roof from the City Code, and acknowledged that the petitioner was proposing very large dormers. He said that staff was required to interpret the building's height based on the narrow language in the Code, noting that the same interpretation had been applied to numerous projects with dormers of various sizes in the recent past.

Mahler addressed Bona's comment about the Central Area Plan. He noted the Michigan Zoning Enabling Act, and asked for her position in regard to this.

Bona said she was referencing that a pure site plan has to meet City Code and ordinance requirements, not the Central Area Plan.

Mahler was very concerned about parking, noting that the scarcity would likely place a burden on the neighborhood. He asked why underground parking was not more aggressively pursued. He was also

disappointed that some of the more environmentally friendly aspects from past projects were not included in the current proposal.

de Parry noted that there were surface lots across the street at the funeral chapel, and down the street at a church. He believed that more people would be moving away from cars, and he anticipated a significant number of spaces would be available at the recently approved parking garage, which would be located just down the street. He said tenants would be able to purchase monthly passes, if necessary.

Mahler thanked the petitioner for answering the question, but noted that of the 144 units being proposed, 75% of tenants would have no parking space, and would have to search elsewhere for parking. He asked again about the environmentally friendly aspects, noting that past PUDs contained geothermal heating, and other features. He said it would have been nice to see those features included with this plan, and believed the two PUDs that preceded this proposal were better plans. He understood that this project met the minimum requirements in Code, but he said the dearth of parking was a real concern. Mahler noted that while the proposed project seemed to meet code, the petitioner brought two prior PUDs for development of the same site which were rejected in the process.

de Parry replied that the project met all Code requirements, noting that outside the box thinking had not worked for the previous proposals.

Pratt asked staff to comment on the number of levels in the buildings. He asked if they were three level buildings, and whether there were four units down and eight on top.

Kahan deferred to the architect.

Moore replied that there were entrances to four units on the main level, with space on the lower and first levels for some units, and the first and second levels for other units. He described these as townhouses. He said there were four, six-bedroom units on the top.

Pratt asked if there were a standard that said a dormer could be this or that percent of the total roof. He had a hard time believing that the proposed roof was in compliance with R4C zoning. He understood that the project met Code, but he questioned whether the project might have a detrimental effect on the health, safety and welfare in the neighborhood, which was a criterion in Chapter 57, Section 5:122. He believed that the project did not enhance the desirability of family residences in the neighborhood, and he believed the lack of parking would place undue burden on neighbors. For these reasons, he struggled to approve the project, but he did not support postponing the project. He said he was willing to propose a moratorium on demolition under new business or elsewhere.

Potts distributed emails from Mr. Whitaker, noting that he researched zoning decisions and found that in each case, a governmental body's decision to deny was upheld in court, because decisions were based on plans, like the Central Area Plan. She said master plans were critical to the court decisions in these disputes. She read an excerpt from the Michigan Zoning Enabling Act. She emphasized that language in Code said site plan approval 'shall' be based on all documents, including master plans.

Mahler clarified Commissioner Potts' statement, noting that the Commission could not take a legal position for the City based on that. He also said the word 'shall' was open to interpretation, noting that every standard in every document may not apply in all cases.

Derezinski said a lot of legal opinions were floating around, but the fact was that staff's recommendation was approval. He said it meant a lot to him that staff said all applicable standards were met. He was not surprised by this proposal in its current form, stating that when the Commission denied the previous

PUDs, everyone knew a proposal such as this was a real possibility. He said the petitioner was being very straightforward in stating that R4C requirements were met. He noted that the examples provided of denying such projects involved zoning, whereas this proposal was a straight site plan. He said the Commission's role was limited in this case, and that he saw very little choice but to follow the zoning law. He felt constrained to follow the law.

Westphal was concerned about the definition of the roof, and asked staff to help everyone understand which features or surfaces were counted to calculate a roof.

Kahan replied that the definition referred to a midpoint elevation between the eaves and ridge for a gabled roof. He said that definitions of ridges and eaves were not specified in Code, but that professional definitions defined eaves as the lowest point in the roof, and ridges as the highest intersection point. He said that despite the large dormers, the roof met the technical definition in Code.

Westphal asked whether the thin strips on the edge of the roof were calculated as eaves. He asked if the strips could be three inches wide and still meet the definition.

Kahan replied that Code did not specify dormers. He said the City had only the language in Chapter 55 to use, and that staff did not look elsewhere for definitions. He said a discussion could be held about the definition of a roof, and acknowledged the limitations in Code.

Pratt said from a common sense standpoint, and with no disrespect to staff, that essentially a third of the tenants in these buildings would technically have no roof over their heads. He acknowledged that he might not be interpreting it correctly, but he could not come to terms with the use of dormers.

Westphal mentioned the neighbors' concerns regarding configuration of the units, and asked for a definition of a unit. He asked if the floors had been examined, and whether separate entrances or locked doors were part of the formula.

Kahan replied that Code allowed up to six, unrelated persons per dwelling unit in R4C areas and up to four persons in R1 and R2. He said the proposal was consistent with current limitations.

Westphal asked if the existence of a common area accessible by six, locked bedrooms caused it to be defined as a dwelling unit.

Kahan replied that Code was not explicit on common space or locked bedrooms. He said it simply stated six, unrelated adults.

Westphal asked if sharing a door constituted a dwelling unit.

Kahan believed the proposed entryways were consistent with Code.

Carlberg read the definition of a dwelling unit from Code, noting that a kitchen area and one or more bathrooms were necessary. She asked if a bedroom with a microwave and a refrigerator would take away from the use of the kitchen.

Potts assumed that a bedroom with its own shower, refrigerator, and microwave would be considered by many to be a unit. She said each bedroom had cooking, sanitary and extra space in it.

Woods agreed with Commissioner Derezinski, noting that the Commission had rejected earlier proposals, knowing that the end result would be something like the current proposal, which she believed no one but

the petitioner was happy with. She said there were many reasons that the Commission needed to approve the project, but that she was disappointed that the petitioner seemed to be going no further than the minimum Code requirements. She was sad that the petitioner had not worked to create a project that would be acceptable to the larger community, but she did credit him for providing more than the minimum number of bicycle parking spaces.

Borum liked Commissioner Pratt's argument about dormers, but said that if all the units were below 30 feet in height, he could not deny the proposal. He also said that it was the Commission's job to put sites in context, and to evaluate what buildings do in the place they are built. He believed that to significantly increase bedrooms and decrease parking on the site would create a nuisance for neighbors. He believed a denial could be based on those grounds.

Bona concurred with Commissioner Borum on the interpretation of the roof, saying that the definition of a roof needed to be addressed. She said she generally supported fewer parking spaces, but she believed that 144 units to 36 spaces was stretching it. She also believed the kitchen space in the bedrooms was another gray area, noting that she believed the bedrooms would be used more like efficiencies. She was surprised that the petitioner was discouraged by the neighbors' lack of support for the current plan, noting that they had not agreed with any of his plans to date. She finished by stating that the Commission was as frustrated with R4C zoning as the neighbors.

Mahler commented on the argument that the project threatened health, safety and welfare in the neighborhood. He believed when specific requirements were met, they could not be trumped by non-specific requirements, like health, safety and welfare. He then asked Commissioner Pratt whether a moratorium on demolition would apply to this project, or just future projects.

Pratt replied that the Commission could only recommend a moratorium to Council. He believed that a moratorium could be proposed at any point in time, regardless of the status of a specific project. He finished by repeating that he did not support postponing the project.

Carlberg said she understood the parking concern, but because the one-and-one-half spaces per unit minimum was met, there were no grounds to deny. She also stated that there was no way to substantiate the detrimental effect on the neighborhood. She hoped that students would see the lack of parking and leave their cars at home. She was sad about the loss of houses on the street, and believed that the project would not in any way replace the quality in the neighborhood. She said the sparseness of buildings would be unattractive, would not be a credit to the developer or community, and would not make the community proud. She was uncomfortable, because she felt compelled to recommend approval.

Westphal said it was rare that he would question staff's evaluation, and he understood that this was this is a by-rights project, but he was interested in getting a better definition of roofs and kitchens. He believed this plan did not meet the spirit of a dwelling unit. He felt compelled to recommend approval, but recognized an inconsistency between the Master Plan and R4C zoning. He was in favor of a moratorium until the inconsistency could be straightened out.

Potts believed the project met minimum standards by eking by and finding loopholes. She noted that occasionally, a developer would go above and beyond, putting projects in neighborhoods that were supported by the residents and community. She was sad that this project aimed to meet the bare minimums in Code. She questioned why each bedroom, if it had everything a person needed to live, was not considered a dwelling unit. She believed that this project was proposed in a fragile neighborhood, and that comfort, property values, and attractiveness were all in jeopardy. She believed that to have its mostly historic homes removed would cause the neighborhood problems. She believed the project failed the health, safety, and welfare test.

Derezinski noted that in staff's opinion, the project met all relevant local, state, and federal laws. He asked staff if they believed the project be a nuisance or threat to health, safety, or welfare. Kahan replied no.

A vote on the motion showed:

YEAS: Bona, Carlberg, Derezinski, Mahler, Westphal, Woods
NAYS: Potts, Borum, Pratt

Motion carried.

(b) Public Hearing and Action on Near North PUD Zoning District and PUD Site Plan, 1.19 acres, 626-724 North Main Street. A request to rezone this site from O (Office District) to PUD (Planned Unit Development District) and a proposal to construct a 39-unit (39 bedrooms total), four-story apartment building with 2,621 square feet of commercial space attached to the building, with a total of 42 parking spaces (37 parking spaces will be below the building), and to demolish five of eight existing single-family homes and to renovate the three remaining homes for commercial uses – Staff Recommendation: Denial

Kowalski made a brief presentation and provided a summary of the proposed project.

Damien Farrell, the project architect, said he believed the location of this project on Main Street was appropriate, and that the project's footprint was comparable to others on Main Street.

Bill Godfrey, of the Three Oaks Group, said significant outreach was conducted to gain the neighborhood's perspective on height and scale. Three meetings were held, and he believed the process worked. He believed the project was similar to Liberty Lofts in the Old West Side. He said some neighbors supported the proposed project, and others opposed it. He said that some view Near North only as an old established neighborhood. He agreed, but also saw the area as part of the Main Street corridor. He believed Near North was a classic interface zone, with a diversity of scale, character and architecture. He listed the public benefits of this project as: Office to Residential down-zoning; a big storm water management system; beautification of the North Main corridor; LEED certification; and the first, new 100% affordable housing in the Central Area in recent history.

Michael Apple, of Avalon Housing, spoke about affordability. He believed the project set very high standards for PUDs in providing affordable housing. First, he said the project was 100% affordable, noting that developers usually aimed for the minimum number of required affordable units. Second, he noted the level of affordability, with an upper level of 50% of area median income. He also noted that 14 units for supportive housing were geared toward the homeless or disabled. Third, he said that a PUD was necessary, because the current requirements for affordable housing made it difficult to do well.

Dale Sanders, the project manager, discussed the scale of the project and showed slides to the Commission and the audience.

Karen Sidney, 100 Longman Lane, spoke in favor of Avalon Housing, but against the project.

Kathleen Baxter, a resident in the North Central Neighborhood, spoke against the project.

Barbara Barden, 538 N. Main, noted that the only blight in the neighborhood was the three houses purchased and boarded up by the Three Oaks Group. She supported affordable housing, but spoke against the project.

John Gildon, 701 N. Fourth Avenue, spoke against the project.

Deanna Relyea, 541 S. Fourth Avenue Kerrytown District Association, read a letter from the Kerrytown District Association, supporting the idea of affordable housing, but respectfully opposing the project.

Steve Glauberman, 711 N. Fifth Avenue, spoke against project.

Mary Browning, from the northwest side of town, spoke in support of the project.

David Burgoyne, 1722 Cambridge, spoke in support of the project.

Yolanda Whiten, Director of the Ann Arbor Community Center, which sits across from the proposed site, spoke in favor of the project, commenting on the opportunities the project could offer the Center in way of new programming.

Paul Shiir, 713 Miner Street, spoke in support of project.

A resident at 601 S. Fourth Avenue spoke in support of Avalon Housing, but against the project.

Peter Pollack, Detroit Street, provided pictures to the Commission, and commented on the project.

Mike Apple, 613 N. Fourth Avenue, spoke in favor of the project.

Michael Brinkman, 718 N. Fourth Avenue, spoke against the project.

Kelly Fitzsimmons, 608 N. Main Street, spoke against the project.

Judy Steiner, 502 Sunset Road, spoke in support of the project.

Karen Park, 620 N. Fourth Avenue, spoke against the project, and encouraged people to visit the neighborhood association's website: www.ncpoa.blogspot.com

Cynthia Pomerleau, 637 N. Fourth Avenue, spoke against the project, noting that 395 residents had signed a petition against the project.

John Beronik, 620 N Fourth Avenue, spoke against project.

Andrea Steves, 805 N. Main Street, spoke against the project.

Margaret Schankler, 711 N. Fourth Avenue, spoke against the project.

Ovide Pomerleau, 637 N. Fourth Avenue, spoke against the project.

Chris Crockett, 506 E. Kingsley Street, spoke against project.

Timothy Furstneau spoke against project.

Rachel Sidler, 717 N. Fifth Avenue, spoke against project.

Rick Struts, 2031 Pine Hollow, spoke in favor of the project.

Gene Eavy, 709 N. Miller, spoke against project.

Susan Gill, 652 N. Fourth Avenue, spoke against the project.

Mike Stearns, 727 Fountain Avenue, spoke against the project.

Ray Detter, 120 N. Division Street, spoke against the project.

Tom Fitzsimmons, representing the North Central Neighborhood Association, spoke against the project.

Teresa Welsh, a member of the developer team, responded to neighbor concerns about the liquor store on site, commenting that it was impossible to remove the liquor store from the project, given the owner's possession of a liquor license. She also said that the housing in the project would remain affordable in perpetuity.

Noting no further speakers, Chair Bona closed the public hearing at 11:15 p.m.

**Moved by Mahler, seconded by Westphal, to continue the meeting
beyond 11:00 p.m.**

Derezinski said it had been a long night, and believed it might not be the best time to have a full discussion. He was against taking a vote on the project that evening.

Potts agreed with Commissioner Derezinski, but noted that because so many people had attended the meeting, it would be a shame not to discuss the item.

Bona noted that the public hearing was closed and would not be reopened if the item were continued at the next meeting.

Woods agreed with Commissioner Potts concern about so many people coming out to the meeting, but after a long day, she supported discussing the item at the next meeting.

Westphal concurred with those who spoke.

Mahler was concerned that because the next agenda was already long, the Commission would be in the same position at the next meeting. He asked staff whether there were time sensitive items coming up on the next few agendas.

Pulcifer replied that the park rezonings could be pushed out further, but that the other items would require permission from the two petitioners to move. She said the Master Plan would require approval from the Service Area Administrator to move.

Pratt thanked the public for coming out to speak. He appreciated their taking the time to attend.

A vote on the motion to continue showed:

YEAS: Mahler, Westphal,
NAYS: Bona, Borum, Carlberg, Derezinski, Potts, Pratt, Woods

Motion failed.

ADJOURNMENT

Bona declared the meeting adjourned at 11:24 p.m.

Mark Lloyd, Manager
Planning and Development Services

Kirk Westphal, Secretary

Prepared by Steve Bartha
Management Assistant
Planning and Development Services